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Central District of California  
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**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

PROTOTYPE ENGINEERING &  
MANUFACTURING, INC.,

Debtor.

Case No. 2:17-bk-21018-RK

Chapter 7

**MEMORANDUM DECISION RE: DENIAL OF  
CHAPTER 7 TRUSTEE'S MOTION TO  
APPROVE COMPROMISE OF  
CONTROVERSY AND AUTHORIZE  
PAYMENT TO AUCTIONEER**

Date: February 27, 2018

Time: 2:00 p.m.

Courtroom: 1675

This bankruptcy case came on for hearing before the undersigned United States Bankruptcy Judge on February 27, 2018 on the motion of Wesley T. Avery, Chapter 7 Trustee, to approve compromise of controversy and authorize payment to auctioneer. Pursuant to Federal Rule of Bankruptcy Procedure 9019, the Chapter 7 Trustee by his motion seeks to compromise a controversy with Creditor Bordbar Trust, the landlord of Debtor Prototype Engineering and Manufacturing, Inc., regarding the administration of Debtor's personal property Timothy J. Yoo, of the law firm of Levene, Neale, Bender,

1 Yoo & Brill, L.L.P., appeared for the Chapter 7 Trustee. Theodore B. Stolman, of the  
2 law firm of Freeman Freeman & Smiley, LLP, appeared for Debtor. Creditor Jon  
3 Ternstrom appeared for himself. Creditor Colleen Carpenter, Administrator of the  
4 Estate of Clayton O. Carpenter, appeared for herself. Creditor Cameron Witzler  
5 appeared formself.  
6

7 Having considered the moving and opposing papers and the oral and written  
8 arguments of the parties, for the reasons stated on the record at the hearing and in this  
9 order, the court denies the motion of the Chapter 7 Trustee to approve the compromise  
10 of controversy and to authorize payment to auctioneer.  
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12 In denying the motion, the court determines that the Chapter 7 Trustee has not  
13 met his burden of proving that the compromise is fair, equitable and adequate. See  
14 Federal Rule of Bankruptcy Procedure 9019; *In re A & C Properties*, 784 F.2d 1377,  
15 1381 (9<sup>th</sup> Cir. 1986). The court has considered the criteria for determining the fairness,  
16 reasonableness and adequacy of the proposed settlement set forth in *In re A & C*  
17 *Properties*: (a) the probability of success in the litigation; (b) the difficulties, if any, to be  
18 encountered in the matter of collection; (c ) the complexity of the litigation involved, and  
19 the expense, inconvenience and delay necessarily attending it; (d) the paramount  
20 interest of the creditors and a proper deference to their reasonable views in the  
21 premises. *Id.*; see also, *In re Slates*, BAP No. EC-12-1168-KiDJu, 2012 WL 5359489  
22 (9<sup>th</sup> Cir. BAP 2012), slip op. at \*11-12.  
23

24 In the proposed settlement, the Chapter 7 Trustee proposed to sell the Debtor's  
25 personal property consisting of milling and machining equipment, furniture, fixtures and  
26 other equipment that the auctioneer had estimated had an auction value of up to  
27 \$55,000 as stated in the moving papers for a payment of \$7,500 by the landlord and a  
28

1 release of the landlord's claim for administrative expense rent estimated to be \$45,000  
2 (of the \$7,500 paid under the settlement, \$4,985 would be paid to the auctioneer for his  
3 services, and only \$2,515 would go to the estate for the value of its assets). The trustee  
4 reasoned that since the landlord was the only known creditor of Debtor's bankruptcy  
5 estate at the time the motion was filed and that the landlord's principal, Barry Bordbar,  
6 was Debtor's principal, it did not make economic sense to sell the property desired by  
7 Debtor's and landlord's principal and then give the sale proceeds to the same parties,  
8 i.e., Debtor's principal through ownership of the landlord. In the trustee's opinion stated  
9 in the moving papers, this justified the private sale of the Debtor's assets rather than a  
10 public auction despite the fact acknowledged by the trustee in the moving papers that  
11 Mr. Bordbar taped off or otherwise marked off many of Debtor's personal property  
12 assets to be auctioned as items that should not be sold, with the trustee stating that in  
13 other cases, he would have sought court relief to proceed with the public auction of the  
14 property. However, the circumstances relied upon by the trustee changed after he filed  
15 his motion to approve compromise of controversy because creditors filed new and  
16 timely proofs of claim and filed written oppositions to the motion and objections to the  
17 proposed private sale of the estate's assets to Debtor's insider and cancellation of the  
18 public auction.

22 In analyzing the criteria for evaluating a settlement under *In re A & C Properties*,  
23 the court acknowledges that there is some justification for the convenience of the  
24 compromise in offsetting what might be realized at an auction as estimated by the  
25 auctioneer against an administrative expense rent claim, which goes to the first two  
26 factors of litigation risk and collection issues. However, these two factors are offset by  
27 other considerations. The bulk of the creditor body opposes the compromise, and their  
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1 objections are reasonable in that the private sale to Debtor's insider may not reflect the  
2 value of the assets, which the court notes is without overbidding. Three creditors,  
3 Creditors Carpenter, Ternstrom and Witzler, with filed claims with a total value of \$35  
4 million oppose the compromise by written and oral objections, and one creditor,  
5 Debtor's landlord, with a claim of \$ 2 million supports it as a party to the proposed  
6 compromise.  
7

8         The court agrees with the objecting creditors that the compromise based on a  
9 private sale to Debtor's insider is not a fair, reasonable or adequate settlement because  
10 there are insufficient protections to assure that the fair value of the assets of the  
11 bankruptcy estate are being realized here because there is no public sale and no  
12 overbidding, which indicate to the court that the assets have not been sufficiently  
13 marketed to assure that full value of the assets are being realized. The purpose of a  
14 public auction, or at least, a private sale with public notice and overbidding is to assure  
15 sufficient exposure to the marketplace to realize value for the estate. *In re Wilde Horse*  
16 *Enterprises, Inc.*, 136 B.R. 830, 841-842 (Bankr. C.D. Cal. 1991)("In approving any sale  
17 outside the ordinary course of business, the court must not only articulate a sufficient  
18 business reason for the sale, it must further find it is in the best interest of the estate,  
19 i.e., it is fair and reasonable, that it has been given adequate marketing, that it has been  
20 negotiated and proposed in good faith, that the purchaser is proceeding in good faith,  
21 and that it is an 'arms-length' transaction."), *citing inter alia, In re Planned Systems, Inc.*,  
22 82 B.R. 919, 923 (Bankr. S.D. Ohio 1988); *see also*, 11 U.S.C. 363(b); Fed. R. Bankr.  
23 P. 6004(f)(1); *see also, In re Slates*, BAP No. EC-12-1168-KiDJu, 2012 WL 5359489,  
24 slip op. at \*11-12.  
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28         The court determines that additionally, as acknowledged by the trustee in his

1 moving papers, the circumstances indicate that the proposed purchaser, the landlord,  
2 interfered or obstructed the trustee's efforts to market and sell the property by cordoning  
3 off Debtor's assets, which the landlord did not have the right to. The fact that the  
4 property was situated on the landlord's premises and the landlord was exercising  
5 dominion over Debtor's assets probably hindered the trustee's efforts to market and sell  
6 the property in a public auction process, which circumstances indicate to the court the  
7 lack of sufficient exposure of the assets to the marketplace and that the proposed  
8 private sale without overbidding unfairly favors Debtor's insider. In order to protect the  
9 integrity of the sale of the assets of this bankruptcy estate, the court cannot find that the  
10 trustee has met his burden of showing that this is a fair, equitable and adequate  
11 compromise, and the court believes that a public auction sale should be conducted to  
12 realize full value of the assets and to assure fairness and transparency of the sales  
13 process. Nothing prevents the landlord from bidding for the assets in a public auction  
14 sale, and if the landlord has a claim for rent, it can be considered and determined in an  
15 open and transparent judicial process with evidence of the validity and amount of the  
16 claim rather than being satisfied through a suspect bargain sale. The court should  
17 accord due deference to the creditors' objections to the proposed compromise, but  
18 acknowledges that such objections are not controlling. *In re A & C Properties*, 784 F.2d  
19 at 1382. However, in this instance, the court determines that the creditors' objections  
20 are reasonable and well-founded, and thus, the court determines that in consideration of  
21 all of the factors in *In re A & C Properties*, the compromise should not be approved. It is  
22 not so clear that the estate would not realize less value in a public auction than in the  
23 proposed compromise. Collection would not be difficult because the public auction of  
24 the estate's assets would be conducted, and whatever amount is collected will be

1 collected. The employment of the auctioneer has been authorized, and had been  
2 prepared to conduct the auction before this motion was brought. The litigation of the  
3 landlord's rent claim would not be complex since it can be computed under the lease  
4 agreement with possible offsets as argued by the objecting creditors that the landlord  
5 has a co-tenant on Debtor's premises or if the landlord obstructed the sale as  
6 suggested in the trustee's moving papers. As stated earlier, the court has duly  
7 considered the paramount interest of creditors and accorded deference to their  
8 reasonable views that the value of the estate assets should be realized in a public  
9 auction process.  
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12 For the foregoing reasons, by separate order being filed and concurrently  
13 herewith, the court denies the trustee's motion to approve compromise of controversy.  
14 However, this denial does not affect the right of the auctioneer to request compensation  
15 for performing his duties as auctioneer, but only to the extent that such compensation is  
16 dependent on the approval of the motion.

17 IT IS SO ORDERED.

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25 Date: March 7, 2018



Robert Kwan  
United States Bankruptcy Judge